

APPENDIX A

List of Leading Commenters

American Conservative Union
American Foundation for the Blind
Arizona Consumer Council *et al*
Banks, LYN, Midwest Television *et al*
CBS Television Affiliates Assoc
Center for Democracy and Technology
Computer & Communications Industry Assoc.
Consumer Electronics Assoc
Digimarc Corp. & Macrovision Corp
Digital Transmission Licensing Administrator, LLC
Directors Guild of America
DirecTV, Inc
Electronic Frontier Foundation
Electronic Privacy Information Center
Free Software Foundation
Home Recording Rights Coalition
Information Technology Assoc of America
Information Technology Industry Council
Internet Commerce Coalition & United States Internet Service Provider Assoc
IT Coalition (Business Software Alliance & Computer Systems Policy Project)
Law Office of Adam Hill
Library Associations
Motion Picture Association of America *et al*
Motorola
National Broadcasting Company
National Cable & Telecommunications Assoc.
National Football League
National Music Publishers' Association, *et al*.
NBC Television Affiliates Assoc
New Yorkers for Fair Use
North American Broadcasters Assoc
Philips Electronics North America
Public Knowledge and Consumers Union
Thomson Inc
TiVo Inc
Veridian Corporation
Verizon
Viacom
Walt Disney Company & ABC Television Network

List of Leading Reply Commenters

American Antitrust Institute
American Society of Composers, Authors & Publishers & Broadcast Music, Inc
Center for Public Broadcasting *et al*

Consumer Electronics Assoc
Corporation for National Research Initiatives
Digital Transmission Licensing Administrator, LLC
DirecTV, Inc
Electronic Frontier Foundation
Home Recording Rights Coalition
IBM
Information Technology Association of America
International Association of Broadcast Monitors
IT Coalition (Business Software Alliance & Computer Systems Policy Project)
Motion Picture Association of America *et al*
National Cable & Telecommunications Assoc.
National Football League *et al*
National Music Publishers' Association, *et al*
New Yorkers for Fair Use
Philips Electronics North America Corporation
Public Knowledge and Consumers Union
Recording Industry Association of America
Thomson, Inc
Veridian Corporation
Worldcom, Inc

APPENDIX B

Part 73 of the Code of Federal Regulations is amended as follows.

PART 73 – RADIO BROADCAST SERVICES

- 1 The authority for Part 73 continues to read as follows

AUTHORITY 47 U.S.C. 154, 303, 334 and 336

- 2 Add subpart L to read as follows:

Subpart L – Digital Broadcast Television Redistribution Control

Sec

73.8000 Incorporations by Reference.

§73.8000 Incorporations by Reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the Federal Register. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC, at the Reference Information Center, Federal Communications Commission, 445 12th. St., SW, Room CY- A257, Washington, DC 20554.

(b) The following materials are available for purchase from at least one of the following addresses. Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 or at <http://global.ihs.com>, or American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036 or at <http://webstore.ansi.org/ansidocstore/default.asp>. --

(1) ATSC A/52. “ATSC Standard Digital Television Audio Compression (AC-3),” 1995, IBR approved for § 73.682.

(2) ATSC A/53 “ATSC Digital Television Standard,” 1995, IBR approved for § 73.682, except for section 5.1.2 of Annex A, and the phrase “see Table 3” in section 5.1.1 Table 2 and section 5.1.2 Table 4

(3) ATSC A/65B “ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,” 2003, IBR approved for §§ 73.9000-73.9001.

(4) International Standard ISO/IEC 13818-1 2000(E), “Information Technology – Generic Coding of Moving Pictures and Associated Audio Information Systems,” 2000, IBR approved for § 73.9000

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- 3 Add subpart M to read as follows

Subpart M – Digital Broadcast Television Redistribution Control

Sec.

73.9000 Definitions

73.9001 Redistribution Control of Digital Television Broadcasts.

73.9002 Sale or Distribution of Demodulators, Covered Demodulator Products, and Peripheral TSP Products

73.9003 Compliance Requirements for Covered Demodulator Products: Unscreened Content.

73.9004 Compliance Requirements for Covered Demodulator Products: Marked Content

73.9005 Compliance Requirements for Covered Demodulator Products: Audio.

73.9006 Add-in Covered Demodulator Products.

73.9007 Robustness Requirements for Covered Demodulator Products

73.9008 Interim Approval of Authorized Digital Output Protection Technologies and Authorized Recording Methods

73.9009 Manufacture for Exportation.

§73.9000 Definitions.

(a) "Authorized Digital Output Protection Technology" means a technology approved pursuant to the procedures in § 73.9008.

(b) "Authorized Recording Method" means a recording method approved pursuant to the procedures in § 73.9008

(c) "Bona Fide Reseller" means a party regularly engaged, or about to become regularly engaged, in the lawful commercial enterprise of selling, reselling, manufacturing, or assembling Demodulators, or products incorporating Demodulators, in compliance with this subpart

(d) "Broadcast Flag" means the Redistribution Control descriptor (rc_descriptor()) described in ATSC Standard A/65B: "Program and System Information Protocol for Terrestrial Broadcast and Cable," (incorporated by reference, see § 73.8000).

(e) "Computer Product" means a product that is designed for or permits the end user to install a wide variety of commercially available software applications thereon, such as a personal computer, handheld "Personal Digital Assistant" and the like, and further includes a subsystem of such a product, such as a graphics card.

(f) "Covered Demodulator Product" means a product that is required under §§ 73.9002(a)(1) or 73.9002(b)(1) to comply with the Demodulator Compliance Requirements, and to be manufactured in accordance with the Demodulator Robustness Requirements

(g) "Demodulator" means a component, or set of components, that is designed to perform the function of 8-VSB, 16-VSB, 64-QAM or 256-QAM demodulation and thereby produce a data stream for the purpose of digital television reception.

(h) "Demodulator Compliance Requirements" means the requirements set out in §§ 73.9003 through 73.9006.

(i) "Demodulator Robustness Requirements" means the requirements set out in § 73.9007

(j) "Peripheral TSP Product" means a product that is capable of accessing in usable form Unscreened Content or Marked Content passed to such product via a Robust Method where the manufacturer of such product has committed in writing in accordance with § 73.9002(c) that such product will comply with the Demodulator Compliance Requirements and be manufactured in accordance with the Demodulator Robustness Requirements

(k) "EIT" means Event Information Table as defined in ATSC Standard A/65B "Program and System Information Protocol for Terrestrial Broadcast and Cable" (incorporated by reference, see § 73.8000).

(l) "Marked Content" means, with respect to a Covered Demodulator Product, Unencrypted Digital Terrestrial Broadcast Content that such product has (1) received and demodulated and for which such product has inspected either the EIT or PMT and determined the Broadcast Flag to be present, or (2) where such product is a Peripheral TSP Product, received via a Robust Method and accessed in usable form, and for which such product either inspected the EIT or PMT and determined the Broadcast Flag to be present or determined through information robustly conveyed with such content that another Covered Demodulator Product had previously so screened such content and determined the Broadcast Flag to be present, provided, however, that, with respect to a Covered Demodulator Product, "Marked Content" shall not include content that has been passed from such product pursuant to §§ 73.9004(a)(1), 73.9004(a)(2), 73.9004(a)(3), 73.9004(a)(5), 73.9004(a)(6), or 73.9006(b).

(m) "PMT" means Program Map Table as defined in International Standard ISO/IEC 13818-1 2000(E): "Information Technology – Generic Coding of Moving Pictures and Associated Audio Information: Systems" (incorporated by reference, see § 73.8000).

(n) "Robust Method" means, with respect to the passing of Unscreened Content or Marked Content from one product to another, a content protection method that complies with § 73.9007

(o) "Transitory Image" means data that has been stored temporarily for the sole purpose of enabling a function not prohibited by this subpart but that (1) does not persist materially after such function has been performed and (2) is not stored in a way that permits copying or storing of such data for other purposes.

(p) "Unencrypted Digital Terrestrial Broadcast Content" means audiovisual content contained in the signal broadcast by a digital television station without encrypting or otherwise making the content available through a technical means of conditional access, and includes such content when retransmitted in unencrypted digital form

(q) "Unscreened Content" means, with respect to a Covered Demodulator Product, Unencrypted Digital Terrestrial Broadcast Content that such product either (1) received and demodulated and for which such product has inspected neither the EIT nor the PMT for the Broadcast Flag or (2) where such product is a Peripheral TSP Product, received via a Robust Method and accessed in usable form, and for which such product has inspected neither the EIT nor the PMT for the Broadcast Flag and has not determined through information robustly conveyed with such content another Covered Demodulator Product had previously so screened such content and determined the Broadcast Flag to be present, provided, however, that, with respect to a Covered Demodulator Product, "Unscreened Content" shall not include content that has been passed from such product pursuant to §§ 73.9003(a)(1), 73.9003(a)(2), 73.9003(a)(3), 73.9003(a)(4), 73.9003(a)(6), 73.9003(a)(7), or 73.9006(b).

(r) "User Accessible Bus" means a data bus that is designed for end user upgrades or access, such as an implementation of a smartcard interface, PCMCIA, Cardbus, or PCI that has standard sockets or otherwise readily facilitates end user access. A "User Accessible Bus" does not include memory buses, CPU buses, or similar portions of a device's internal architecture that do not permit access to content in a form usable by end users

73.9001 Redistribution Control of Digital Television Broadcasts.

Licensees of TV broadcast stations may utilize the Redistribution Control descriptor described in ATSC Standard A/65B. "Program and System Information Protocol for Terrestrial Broadcast and Cable," (incorporated by reference, see § 73.8000) provided they do not transmit the optional additional redistribution control information

§73.9002 Sale or Distribution of Demodulators, Covered Demodulator Products, and Peripheral TSP Products

(a) Demodulators. No party that manufactures or imports a Demodulator shall sell or distribute in interstate commerce such Demodulator unless

(1) at the time of such sale or distribution such Demodulator is itself, or is incorporated into, a product that complies with the Demodulator Compliance Requirements and was manufactured in accordance with the Demodulator Robustness Requirements, or

(2) such sale or distribution is to a party that has committed in writing pursuant to paragraph (d) of this section not to sell or distribute Demodulators other than in accordance with paragraphs (a)(1) or (a)(2) of this section

(b) Covered Demodulator Products. No party shall sell or distribute in interstate commerce a Covered Demodulator Product that does not comply with the Demodulator Compliance Requirements and Demodulator Robustness Requirements. The requirements of this paragraph shall not apply to the sale or resale of a product that was manufactured prior to the effective date of this subpart or that initially was sold or distributed in compliance with this subpart

(c) Peripheral TSP Products No party that manufactures or imports a Peripheral

TSP Product shall sell or distribute such Peripheral TSP Product in interstate commerce unless, at the time of such sale or distribution, such Peripheral TSP Product complies with the Demodulator Compliance Requirements and was manufactured in accordance with the Demodulator Robustness Requirements. The requirements of this paragraph shall not apply to the sale or resale of a product that was manufactured prior to the effective date of this subpart or that was initially sold or distributed in compliance with this subpart

(d) Written Commitments.

(1) A written commitment to allow sale or distribution of Demodulators under paragraph (a)(2) of this section, or for a Peripheral TSP Product, shall be submitted to the Federal Communications Commission, Chief, Media Bureau, Attn: Broadcast Flag Written Commitment, 445 12th Street, SW, Washington, DC, 20554.

(2) The information to be provided by a party filing a written commitment to allow sale or distribution of Demodulators under paragraph (a)(2) of this section shall include a statement that one of the following conditions is true:

(i) the party is a Bona Fide Reseller;

(ii) the party is a licensed digital television broadcaster; or

(iii) the party is a multichannel video programming distributor, or other party engaged, or about to become engaged, in the lawful retransmission of Unencrypted Digital Terrestrial Broadcast Content pursuant to § 76.1909 of this chapter.

(3) The information to be provided by a party filing a written commitment for a Peripheral TSP Product shall include statements that that the party is engaged, or about to become engaged, in the lawful commercial enterprise of manufacturing such Peripheral TSP Product, and that such product will comply with the Demodulator Compliance Requirements and be manufactured in accordance with the Demodulator Robustness Requirements.

(4) It shall be a violation of this subpart, enforceable by the Commission, for any person that has filed a written commitment pursuant to paragraph (d) of this section to:

(i) in the case such commitment to allow sale or distribution of Demodulators under paragraph (a)(2) of this section, sell or distribute the Demodulator other than in accordance with paragraphs (a)(1) or (a)(2) of this section; or

(ii) in the case of such commitment for a Peripheral TSP Product, sell or distribute the Peripheral TSP Product other than in compliance with paragraph (c) of this section

(5) Written commitments filed pursuant to paragraph (d) of this section will be publicly available in accordance with §§ 0.441 through 0.470 of this chapter

(e) The requirements of this section shall become applicable on July 1, 2005

§ 73.9003 Compliance Requirements for Covered Demodulator Products: Unscreened Content

(a) A Covered Demodulator Product shall not pass, or direct to be passed, Unscreened Content to any output except:

(1) to an analog output,

(2) to an 8-VSB, 16-VSB, 64-QAM or 256-QAM modulated output, provided that the Broadcast Flag is retained in the both the EIT and PMT,

(3) to a digital output protected by an Authorized Digital Output Protection Technology authorized for use with Unscreened Content, in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008,

(4) where the stream containing such content has not been altered following demodulation and such Covered Demodulator Product outputs, or directs to be output, such content to a Peripheral TSP Product solely within the home or other, similar local environment, using a Robust Method,

(5) where such Covered Demodulator Product outputs, or directs to be output, such content to another product and such Covered Demodulator Product exercises sole control (such as by using a cryptographic protocol), in compliance with the Demodulator Robustness Requirements, over the access to such content in usable form in such other product,

(6) where such Covered Demodulator Product outputs, or directs to be output, such content for the purpose of making a recording of such content pursuant to paragraph (b)(2) of this section, where such content is protected by the corresponding recording method; or

(7) where such Covered Demodulator Product is incorporated into a Computer Product and passes, or directs to be passed, such content to an unprotected output operating in a mode compatible with the Digital Visual Interface (DVI) Rev. 1.0 Specification as an image having the visual equivalent of no more than 350,000 pixels per frame (e.g., an image with resolution of 720 x 480 pixels for a 4:3 (nonsquare pixel) aspect ratio), and 30 frames per second. Such an image may be attained by reducing resolution, such as by discarding, dithering or averaging pixels to obtain the specified value, and can be displayed using video processing techniques such as line doubling or sharpening to improve the perceived quality of the image.

(b) A Covered Demodulator Product shall not record or cause the recording of Unscreened Content in digital form unless such recording is made using one of the following methods.

(1) a method that effectively and uniquely associates such recording with a single Covered Demodulator Product (using a cryptographic protocol or other effective means) so that such recording cannot be accessed in usable form by another product except where the content of such recording is passed to another product as permitted under this subpart, or

(2) an Authorized Recording Method authorized for use with Unscreened Content in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008 (provided that for recordings made on removable media, only Authorized Recording Methods expressly approved pursuant to § 73.9008 for use in connection with removable media may be used)

(c) Paragraph (b) of this section does not impose restrictions regarding the storage of Unscreened Content as a Transitory Image

(d) The requirements of this section shall become applicable on July 1, 2005

§ 73.9004 Compliance Requirements for Covered Demodulator Products: Marked Content

(a) A Covered Demodulator Product shall not pass, or direct to be passed, Marked Content to any output except

(1) to an analog output,

(2) to an 8-VSB, 16-VSB, 64-QAM or 256-QAM modulated output, provided that the Broadcast Flag is retained in the both the EIT and PMT;

(3) to a digital output protected by an Authorized Digital Output Protection Technology, in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008,

(4) where such Covered Demodulator Product outputs, or directs to be output, such content to another product and such Covered Demodulator Product exercises sole control (such as by using a cryptographic protocol), in compliance with the Demodulator Robustness Requirements, over the access to such content in usable form in such other product,

(5) where such Covered Demodulator Product outputs, or directs to be output, such content for the purpose of making a recording of such content pursuant to paragraph (b)(2) of this section, where such content is protected by the corresponding recording method, or

(6) where such Covered Demodulator Product is incorporated into a Computer Product and passes, or directs to be passed, such content to an unprotected output operating in a mode compatible with the Digital Visual Interface (DVI) Rev 1.0 Specification as an image having the visual equivalent of no more than 350,000 pixels per frame (e.g., an image with resolution of 720 x 480 pixels for a 4:3 (nonsquare pixel) aspect ratio), and 30 frames per second. Such an image may be attained by reducing resolution, such as by discarding, dithering or averaging pixels to obtain the specified value, and can be displayed using video processing techniques such as line doubling or sharpening to improve the perceived quality of the image.

(b) A Covered Demodulator Product shall not record or cause the recording of Marked Content in digital form unless such recording is made using one of the following methods

(1) a method that effectively and uniquely associates such recording with a single Covered Demodulator Product (using a cryptographic protocol or other effective means) so that such recording cannot be accessed in usable form by another product except where the content of such recording is passed to another product as permitted under this subpart or

(2) an Authorized Recording Method in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008 (provided that for recordings made on removable media, only Authorized Recording Methods expressly approved pursuant to § 73.9008 for use in connection with removable media may be used)

(c) Paragraph (b) of this section does not impose restrictions regarding the storage of Marked Content as a Transitory Image

(d) The requirements of this section shall become applicable on July 1, 2005

§ 73.9005 Compliance Requirements for Covered Demodulator Products: Audio.

Except as otherwise provided in §§ 73.9003(a) or 73.9004(a), Covered Demodulator Products shall not output the audio portions of Unscreened Content or of Marked Content in digital form except in compressed audio format (such as AC3) or in Linear PCM format in which the transmitted information is sampled at no more than 48 kHz and no more than 16 bits/sample. The requirements of this section shall become applicable on July 1, 2005

§ 73.9006 Add-in Covered Demodulator Products.

Where a Covered Demodulator Product passes Unscreened Content or Marked Content to another product, other than where such Covered Demodulator Product passes, or directs such content to be passed to an output (e.g., where a demodulator add-in card in a personal computer passes such content to an associated software application installed in the same computer), it shall pass such content:

(a) using a Robust Method, or

(b) protected by an Authorized Digital Output Protection Technology authorized for such content in accordance with any applicable obligations established as a part of its approval pursuant to § 73.9008. Neither Unscreened Content nor Marked Content may be so passed in unencrypted, compressed form via a User Accessible Bus.

The requirements of this section shall become applicable on July 1, 2005.

§ 73.9007 Robustness Requirements for Covered Demodulator Products.

The content protection requirements set forth in the Demodulator Compliance Requirements shall be implemented in a reasonable method so that they cannot be defeated or circumvented merely by an ordinary user using generally-available tools or equipment. The requirements of this section shall become applicable on July 1, 2005

Note to §73.9007 Generally-available tools or equipment means tools or equipment that are widely available at a reasonable price, including but not limited to, screwdrivers, jumpers, clips and soldering irons. Generally-available tools or equipment also means specialized electronic tools or software tools that are widely available at a reasonable price, other than devices or technologies that are designed and made available for the specific purpose of bypassing or circumventing the protection technologies used to meet the requirements set forth in this subpart. Such specialized electronic tools or software tools includes, but is not limited to, EEPROM readers and writers, debuggers or decompilers

§ 73.9008 Interim Approval of Authorized Digital Output Protection Technologies and Authorized Recording Methods

(a) Certifications for Digital Output Protection Technologies and Authorized Recording Methods The proponent of a specific digital output protection technology or recording method seeking approval for use in Covered Demodulator Products shall certify to the Commission that such digital output protection technology or recording method is appropriate for use in Covered Demodulator Products to give effect to the Broadcast Flag. Such certification shall include the following information:

(1) a general description of how the digital output protection technology or recording method works, including its scope of redistribution;

(2) a detailed analysis of the level of protection the digital output protection technology or recording method affords content,

(3) information regarding whether content owners, broadcasters or equipment manufacturers have approved or licensed the digital output protection technology or recording method for use, and

(4) if the technology is to be offered publicly, a copy of its licensing terms, and fees, as well as evidence demonstrating that the technology will be licensed on a reasonable, non-discriminatory basis

If any of the information is proprietary in nature, the proponent may seek confidential treatment of the proprietary portion of their certification pursuant to § 0.459 of this chapter

(b) Initial certification window Following the effective date of this subpart, the Commission shall issue a public notice commencing an initial certification window for digital output protection technologies or recording methods. Within thirty (30) days after the date of this public notice, proponents of digital output protection technologies or recording methods may file certifications pursuant to paragraph (a) of this section

Following close of the initial certification window, the Commission shall issue a public notice identifying the certifications received and commencing an opposition window. Within twenty (20) days after the date of this public notice, oppositions may be filed with respect to a certification.

(1) If no objections are received in response to a proponent's certification within the twenty (20) day opposition window, the Commission shall expeditiously issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with Covered Demodulator Products.

(2) If an objection is raised within the twenty (20) day opposition window alleging that a proponent's certification contains insufficient information to evaluate the appropriateness of the underlying digital output protection technology or recording method for use with Covered Demodulator Products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall determine whether to dismiss the certification without prejudice or to undertake a full review of the certification's merits pursuant to paragraph (d) of this section.

(3) If an objection is raised within the twenty (20) day opposition window alleging that a proponent's digital output protection technology or recording method is inappropriate for use with Covered Demodulator Products, the Commission shall undertake a full review of the associated certification's merits pursuant to paragraph (d) of this section. The proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. In such cases, the Commission shall issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with Covered Demodulator Products.

(c) Effect of subsequent certifications Where a proponent of a digital output protection technology or recording method files a certification pursuant to paragraph (a) of this section subsequent to the initial certification window described in paragraph (b) of this section.

(1) If no objections are received in response to a proponent's certification within twenty (20) days after the date of public notice of the filing of such certification, the Commission shall expeditiously issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with Covered Demodulator Products.

(2) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that such certification contains insufficient information to evaluate the appropriateness of the underlying digital output protection technology or recording method for use with Covered Demodulator Products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall determine whether to dismiss the certification without prejudice or to undertake a full review of the certification's merits pursuant to paragraph (d) of this section.

(3) If an objection is raised within twenty (20) days after the date of public notice of the filing of a proponent's certification alleging that the underlying digital output

protection technology or recording method is inappropriate for use with Covered Demodulator Products, the proponent may file a reply within 10 days after the close of the twenty (20) day opposition window. The Commission shall undertake a full review of the certification's merits pursuant to paragraph (d) of this section. In such cases, the Commission shall issue a determination indicating whether the underlying digital output protection technology or recording method is approved for use with Covered Demodulator Products.

(d) Commission determinations. Where the Commission undertakes a full review of the merits of a certification for a digital output protection technology or recording method, the Commission may consider, where applicable, the following factors:

(1) Technological factors including but not limited to the level of security, scope of redistribution, authentication, upgradability, renewability, interoperability, and the ability of the digital output protection technology to revoke compromised devices;

(2) The applicable licensing terms, including compliance and robustness rules, change provisions, approval procedures for downstream transmission and recording methods, and the relevant license fees,

(3) The extent to which the digital output protection technology or recording method accommodates consumers' use and enjoyment of Unencrypted Digital Terrestrial Broadcast Content, and

(4) Any other relevant factors the Commission determines warrant consideration.

(e) Revocation of Approval

(1) If the security of a content protection technology or recording method approved for use in Covered Demodulator Products has been compromised, a person may seek revocation of such approval pursuant to §76.7 of this chapter.

(2) Petitioners seeking revocation of a content protection technology or recording method's approval for use in Covered Demodulator Products shall articulate in detail the extent to which the content protection or recording technology has been compromised and demonstrate why alternative measures are insufficient to address the breach in security.

§ 73.9009 Manufacture for Exportation

The requirements of this subpart do not apply to Demodulators, Covered Demodulator Products or Peripheral TSP Products manufactured in the United States solely for export.

Part 76 of the Code of Federal Regulations is amended as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

4 The authority for Part 76 continues to read as follows:

AUTHORITY 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 531, 571, 572, and 573.

5 Add new §76.1909 to read as follows.

§ 76.1909 Redistribution Control of Unencrypted Digital Terrestrial Broadcast Content.

(a) For the purposes of this section, the terms Unencrypted Digital Terrestrial Broadcast Content, EIT, PMT, Broadcast Flag, Covered Demodulator Product, and Marked Content shall have the same meaning as set forth in § 73.9000 of this chapter.

(b) Encrypted Retransmission. Where a multichannel video programming distributor retransmits Unencrypted Digital Terrestrial Broadcast Content in encrypted form, such distributor shall, upon demodulation of the 8-VSB, 16-VSB, 64-QAM or 256-QAM signal, inspect either the EIT or PMT for the Broadcast Flag, and if the Broadcast Flag is present.

(1) securely and robustly convey that information to the consumer product used to decrypt the distributor's signal information, and

(2) require that such consumer product, following such decryption, protect the content of such signal as if it were a Covered Demodulator Product receiving Marked Content

(c) Unencrypted Retransmission. Where a multichannel video programming distributor retransmits Unencrypted Digital Terrestrial Broadcast Content in unencrypted form, such distributor shall, upon demodulation:

(1) preserve the Broadcast Flag, if present, in both the EIT and PMT; and

(2) use 8-VSB, 16-VSB, 64-QAM, or 256-QAM signal modulation for the retransmission

(d) Unmarked Content Where a multichannel video programming distributor retransmits Unencrypted Digital Terrestrial Broadcast Content that is not marked with the Broadcast Flag, the multichannel video programming distributor shall not Encode such content to restrict its redistribution

APPENDIX C FINAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Further Notice of Proposed Rulemaking* ("FNPRM")² The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA No comments were received on the IRFA This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA³

A. Need for, and Objectives of, the Report and Order. The need for FCC regulation in this area derives from a forthcoming threat to over-the-air broadcast television in so far as high quality digital programming may be withheld from broadcast outlets by content owners fearful of the content's indiscriminate redistribution The objective of the final rules, as set forth in the *Report and Order* portion of the *Report and Order and Further Notice of Proposed Rulemaking*, is to facilitate the DTV transition by creating a flag-based content protection system which will limit the indiscriminate redistribution of digital broadcast content and thereby protect the continued flow of high value content to consumers via over-the-air broadcasting

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No comments were received in response to the IRFA

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity."⁵ In addition, the term "small Business" has the same meaning as the term "small business concern" under the Small Business Act⁶ A small business concern is one which: (1) is independently owned and

¹ See 5 U.S.C. § 603 The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996)

² *Digital Broadcast Copy Protection*, 17 FCC Rcd 16027 (2002) ("FNPRM")

³ See 5 U.S.C. § 604

⁴ 5 U.S.C. § 603(b)(3)

⁵ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632) Pursuant to the RFA, the statutory definition of a small business applies, "unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such the term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632) Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register "

operated, (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA")⁷

Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than \$12 million in annual receipts as a small business.⁸ Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound."⁹ According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of \$12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁰ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).¹¹ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Cable and Other Program Distribution. The SBA has developed a small business size standard for cable and other program distribution services, which includes all such companies

⁷ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation, and independence are sometime difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

⁸ See OMB, North American Industry Classification System. United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

⁹ OMB, North American Industry Classification System. United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 51520 in October 2002). This category description continues, "These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources." Separate census categories pertain to businesses primarily engaged in producing programming. See *id.* at 502-05, NAICS code 51210 Motion Picture and Video Production, code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

¹⁰ "Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 C.F.R. § 121.103(a)(1).

¹¹ FCC News Release, "Broadcast Station Totals as of September 30, 2002."

generating \$12.5 million or less in revenue annually.¹² This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, multipoint distribution services ("MDS"), multichannel multipoint distribution service ("MMDS"), Instructional Television Fixed Service ("ITFS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). According to the Census Bureau data, there are 1,311 total cable and other pay television service firms that operate throughout the year of which 1,180 have less than \$10 million in revenue.¹³ We address below each service individually to provide a more precise estimate of small entities.

Cable Operators. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.¹⁴ We last estimated that there were 1,439 cable operators that qualified as small cable companies.¹⁵ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Further Notice.

The Communications Act, as amended, also contains a size standard for a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁶ The Commission has determined that there are 68,500,000 subscribers in the United States. Therefore, an operator serving fewer than 685,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.¹⁷ Based on available data, we find that the number of cable operators serving 685,000 subscribers or less totals approximately 1,450.¹⁸ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the

¹² 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220). This NAICS code applies to all services listed in this paragraph.

¹³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁴ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd. 7393 (1995).

¹⁵ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

¹⁶ 47 U.S.C. § 543(m)(2).

¹⁷ 47 C.F.R. § 76.1403(b).

¹⁸ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

number of cable system operators that would qualify as small cable operators under the definition in the Communications Act

Direct Broadcast Satellite ("DBS") Service. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution Services.¹⁹ This definition provides that a small entity is one with \$12.5 million or less in annual receipts.²⁰ There are four licensees of DBS services under Part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees that are operational have annual revenues that may be in excess of the threshold for a small business.²¹ The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge, despite the absence of specific data on this point, that there are entrants in this field that may not yet have generated \$12.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

Home Satellite Dish ("HSD") Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution Services.²² This definition provides that a small entity is one with \$12.5 million or less in annual receipts.²³ The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.²⁴ HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming, and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.²⁵

Multipoint Distribution Service ("MDS"), Multichannel Multipoint Distribution Service ("MMDS") Instructional Television Fixed Service ("ITFS") and Local Multipoint Distribution Service ("LMDS"). MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS

¹⁹ 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220)

²⁰ *Id.*

²¹ *Id.*

²² 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220)

²³ *Id.*

²⁴ *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 12 FCC Rcd 4358, 4385 (1996) ("Third Annual Report")

²⁵ *Id.* at 4385

and ITFS.²⁶ LMDS is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.²⁷

In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues of less than \$40 million in the previous three calendar years.²⁸ This definition of a small entity in the context of MDS auctions has been approved by the SBA.²⁹ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating \$12.5 million or less in annual receipts.³⁰ This definition includes multipoint distribution services, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$12.5 million annually. Therefore, for purposes of the IRFA, we find there are approximately 850 small MDS providers as defined by the SBA and the Commission's auction rules.

The SBA definition of small entities for Cable and Other Program Distribution Services, which includes such companies generating \$12.5 million in annual receipts, seems reasonably applicable to ITFS.³¹ There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.³² However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

Additionally, the auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³³ An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million.

²⁶ *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, 10 FCC Rcd at 9589, 9593 (1995) ("ITFS Order").

²⁷ *See Local Multipoint Distribution Service*, 12 FCC Rcd 12545 (1997) ("LMDS Order").

²⁸ 47 C.F.R. § 21.961(b)(1).

²⁹ *See ITFS Order*, 10 FCC Rcd at 9589.

³⁰ 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220).

³¹ *Id.*

³² SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. § 601(5).

³³ *See LMDS Order*, 12 FCC Rcd at 12545.

for the preceding calendar years.³⁴ These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.³⁵ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses, there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

In sum, there are approximately a total of 2,000 MDS/MMDS/LMDS stations currently licensed. Of the approximate total of 2,000 stations, we estimate that there are 1,595 MDS/MMDS/LMDS providers that are small businesses as deemed by the SBA and the Commission's auction rules.

Satellite Master Antenna Television ("SMATV") Systems. The SBA definition of small entities for Cable and Other Program Distribution Services includes SMATV services and, thus, small entities are defined as all such companies generating \$12.5 million or less in annual receipts.³⁶ Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995.³⁷ Other estimates indicate that SMATV operators serve approximately 1.5 million residential subscribers as of July 2001.³⁸ The best available estimates indicate that the largest SMATV operators serve between 15,000 and 55,000 subscribers each. Most SMATV operators serve approximately 3,000-4,000 customers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

Open Video Systems ("OVS"). Because OVS operators provide subscription services,³⁹ OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services.⁴⁰ This definition provides that a small entity is one with \$12.5 million or less in annual receipts.⁴¹ The Commission has certified 25 OVS operators with some now providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial

³⁴ *Id.*

³⁵ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

³⁶ 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220).

³⁷ See *Third Annual Report*, 12 FCC Rcd at 4403-4.

³⁸ See *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 17 FCC Rcd 1244, 1281 (2001) ("*Eighth Annual Report*").

³⁹ See 47 U.S.C. § 573.

⁴⁰ 13 C.F.R. § 121.201, NAICS code 517510 (formerly 513220).

⁴¹ *Id.*

information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment⁴² as well as radio and television broadcasting and wireless communications equipment⁴³. These categories both include all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern⁴⁴. Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.⁴⁵ The remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern⁴⁶. Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.⁴⁷ The remaining 65 establishments have 500 or more employees; however, we are unable to

⁴² 13 CFR § 121.201, NAICS code 334310

⁴³ 13 CFR § 121.201, NAICS code 334220

⁴⁴ 13 CFR § 121.201, NAICS code 334310

⁴⁵ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁴⁶ 13 C.F.R. § 121.201, NAICS code 334220

⁴⁷ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

Computer Manufacturers The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of electronic computers manufacturing. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.⁴⁸ Census Bureau data indicates that there are 563 firms that manufacture electronic computers and of those, 544 have fewer than 1,000 employees and qualify as small entities.⁴⁹ The remaining 19 firms have 1,000 or more employees. We conclude that there are approximately 544 small computer manufacturers.

Description of Projected Reporting, Recordkeeping and other Compliance Requirements. On the transmission side, the final rules do not require the use of the ATSC flag by broadcasters, but instead permit the use of the flag at the broadcaster's discretion for redistribution control purposes.

With respect to the reception side of the equation, the final rules require that demodulators integrated within, or produced for use in, DTV reception devices, including PC and IT products, (*i.e.*, "Covered Demodulator Products"), must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. The compliance rules detail the appropriate manner in which Demodulator Products may output flag-marked content. As to robustness, the generalized "ordinary user" standard contained in the final rules should afford consumer electronics, and IT and PC manufacturers, flexibility in determining how to protect flag-marked content.

Administratively, the final rules adopt a written commitment regime whereby manufacturers or importers of demodulators obtain from buyers a written commitment that they will incorporate such demodulators into compliant and robust devices, or sell or distribute to third parties that have also made such written commitment. The *Report and Order* also adopts a written commitment regime to ensure that manufacturers or importers of "Peripheral TSP Products" that can be used in connection with demodulators will abide by the Demodulator Product compliance and robustness rules.

The *Report and Order* also establishes interim procedures by which proponents of a particular content protection or recording technology can certify to the Commission that such technology is appropriate for use in Demodulator Products. Upon review of a proponent's submission, the Commission will issue a public notice. If no objection is received within 20 days, the Commission will expeditiously determine whether the technology is approved for use in Demodulator Products. If substantive objections are received with respect to a particular technology, the Commission will undertake an expedited review of its merits. The interim procedures also provide for the revocation of insecure or compromised content protection and

⁴⁸ 13 C.F.R. § 121.201, NAICS code 334111.

⁴⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Electronic Computer Manufacturing, Table 4 at 9 (1999).

recording technologies

Finally, the *Report and Order* permits MVPDs to perpetuate the flag in two ways on their systems. (1) by MVPD pass-through of the ATSC flag where the retransmission is unencrypted, or (2) where the retransmission is encrypted, by conveying the presence of the flag by some means that requires the consumer's reception equipment to protect the content as if the flag were present

D. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others) (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards, and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁵⁰

Because use of the ATSC flag is voluntary on the part of broadcasters, we do not believe that small broadcast stations will be significantly economically affected by the final rules. On the reception side, while all consumer electronics, information technology, and personal computer manufacturers will be required to integrate flag recognition capability into devices designed for television reception, we do not believe that small manufacturers will be adversely affected since the cost of integrating the necessary technology is de minimis.⁵¹ The written commitment regime should likewise have no significant effect on small manufacturers or importers as there is little cost involved in preparing and filing a written commitment. As to the interim procedures for approval of new content protection and recording technologies, we do not believe that small entities seeking approval will be significantly economically affected by the applicable procedures. Finally, we believe that the flexibility afforded MVPDs in how to effectuate the flag will mitigate any potential significant economic impact on smaller MVPDs.

E. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

Report to Congress: The Commission will send a copy of the *Report and Order and Further Notice of Proposed Rulemaking*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁵² In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the

⁵⁰ 5 U.S.C. § 603(b)

⁵¹ MPAA Reply Comments at 16

⁵² See 5 U.S.C. § 801(a)(1)(A)

Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register⁵³

⁵³ See 5 U.S.C. § 604(b)